

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-004977

07/29/2014

HON. ROGER E. BRODMAN

CLERK OF THE COURT
N. Moore
Deputy

IN RE THE MATTER OF
KATHRYN ANNE JACOBS

DAVID S YUHAS

AND

DANIEL PROKOSCH

HEIDI ANN LUKACSIK

CORY SHAW
1334 E. CHANDLER BLVD.
STE. #5A-14
PHOENIX AZ 85048-6268

MINUTE ENTRY

Courtroom CCB 601

11:37 a.m. This is the time set for the Telephonic Status Conference with regard to Petitioner's April 2, 2014 Petition To Modify Legal Decision Making (Custody), Parenting Time And Child Support and Respondent's April 17, 2014 Response thereto. Petitioner/Mother is not present, but is represented by counsel appearing telephonically. Respondent/Father is not present, but is represented by counsel appearing telephonically. Cory Shaw, Court-Appointed Advisor, appears telephonically.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held with the Court regarding setting a hearing.

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EVIDENTIARY HEARING SETTING

IT IS ORDERED:

1. An evidentiary hearing on Petitioner's **Petition To Modify Legal Decision Making (Custody), Parenting Time And Child Support** will take place as follows:

- a. **Date – November 17, 2014**
- b. **Time – 8:30 a.m.**
- c. **Location** – Maricopa County Superior Court
Central Court Building
201 W. Jefferson
Courtroom 601
Phoenix, Arizona 85003

2. **Time Set Aside for You** – The Court has set aside **1 day** for this hearing. Pursuant to Rule 77(C)(5), Arizona Rules of Family Law Procedure, each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the hearing in the allotted time, and the time will not be extended absent a motion granted by the Court and filed at least thirty (30) days prior to the hearing setting forth good cause to extend the time and specifically including a list of each and every witness who will testify and an estimate of time and subject matter of the expected testimony for each witness.

3. **Findings of Fact and Conclusions of Law** – You may request findings of fact and conclusions of law regarding the following issues, if they are contested: child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request findings of fact and conclusions of law, you must file a written request with the Court before the evidentiary hearing. If you do so, the Court will include findings of fact and conclusions of law in its final, written decision.

If either party asks the Court to make findings of fact and conclusions of law regarding any issue, then each party must file written proposed findings of fact and conclusions of law regarding all such issues twenty days before the hearing. The proposed findings also must be submitted in an electronic form (preferably Microsoft Word) that can be edited. **The proposed findings and conclusions must be submitted as an attachment to the Prehearing Memorandum** (the Prehearing Memorandum is discussed below). **If you fail to do this, you will be deemed to have waived a request for such findings and conclusions.**

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4. **Additional Time** – If you think additional time needs to be set aside, you must request it by filing a motion not later than 30 days before the hearing date stated above. That request must include a reasonable explanation for the request **ALONG WITH** a list of each witness that you intend to have testify, a statement that describes what you expect each such witness to say, and an estimate of the amount of time you think will be necessary for that witness to testify. Because of the large number of cases assigned to this Division, it is very difficult to reschedule hearings. Therefore, requests for additional time will be granted only in extraordinary circumstances.

5. **Continuances** – Requests to continue (or postpone) the hearing are usually denied. If you think that a postponement is necessary, the request must be made by motion as far in advance of the hearing as possible, and that motion must present very compelling reasons for the request. Simply stating “I need more time to prepare” is not sufficient.

Generally, merely stating in the motion that the other party and you are trying to reach a settlement, without any specifics about the subjects of disagreement and what has so far prevented agreements from being reached, will not be sufficient. Before filing such a motion, you should make a reasonable attempt to ask the other party (or that party’s attorney, if there is one) whether that party agrees or disagrees about a postponement, and then state that party’s position in the motion. Even if the other party agrees to the continuance, the motion must still provide sufficient reasons for the request.

VERY IMPORTANT
What You Need to Do Before the Hearing

1. **Disclosure** -- You must tell the other party, in writing, everything that you will ask the Court to consider when deciding your case. Disclosure includes the following:

a. **Witnesses** – You must prepare a list of the witnesses whom you intend to present to testify on your behalf. The list must include the name, address (if known), and telephone number (if known) of each witness and a reasonable description about what you expect that witness to say. The list must be mailed or hand-delivered to the other party and to the Court at least 30 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list to the other party.

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b. **Exhibits** – If you want the Court to consider anything in writing or that can be copied onto paper (such as e-mails, text messages, and photographs), you must do the following: (i) prepare a list of each such item, (ii) copy each such item, and (iii) provide a copy of the list and a copy of each item on the list to the other party at least 15 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list and copies of everything listed to the other party. **DO NOT FILE EXHIBITS WITH THE CLERK OF COURT.**

In addition, a complete set of those exhibits (separated by a colored sheet) must be delivered to the Clerk of this Division at least 7 days before the hearing date so that the Clerk can “mark” the exhibits, i.e., assign the “official” numbers to those exhibits. If you do not do so, then each of your exhibits will have to be marked during the hearing. That will take time, and the time spent doing that will come out of the time allocated to you. **NOTE: DO NOT PROVIDE A BENCH COPY OF YOUR EXHIBITS.**

NOTE: We do not hold spots for supplemental exhibits.

c. **Affidavit of Financial Information** – At least 15 days before the hearing date listed above, you must file with the Court an Affidavit of Financial Information. In addition, at the same time, you must provide a copy of that Affidavit **and all attachments** specified in the Affidavit to the other party. The form to be used can be found on the Internet at this Court’s website.

d. **Expert Witnesses** – Expert witnesses are generally people with specialized training, education, or expertise, such as psychologists or accountants. If you intend to have an expert witness testify on your behalf, you must provide the name of the expert witness and the subject matter of his/her testimony to the other party not less than 45 days before the scheduled hearing date.

These requirements regarding expert witnesses do not apply to court-appointed parenting coordinators, Court Appointed Advisers, and other court appointees who submit written reports to the Court and the parties in advance of the hearing. You will be permitted to have that person testify as you would any other witness, so long as you have included that person on your list of witnesses. Whether or not you ask that person to testify on your behalf, if you want the Court to consider any report that person wrote, you must include it on your list of exhibits.

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2. **Discovery** – All discovery (for example, interrogatories, requests for documents, and depositions) must be completed at least 20 days before the hearing date listed above.

a. For interrogatories and document requests, “completed” means that you must send them to the other party **so that the responses will be due at least 20 days before the hearing date.**

b. Any deposition transcripts, interrogatory answers, or written responses to document requests that you want the Court to consider should be listed on your list of exhibits.

c. You must comply with any reasonable request from the other party for written consents or releases that will allow the other party to obtain records and other documents that the Court may need to consider, including records from a bank or other financial institution where you have an account, a company including present and past employers, or health care providers including medical professionals who have treated you.

i. A party making such a request must have a reasonable basis for doing so and may not use this requirement as an opportunity to conduct a fishing expedition in the hope that something useful may turn up.

ii. If a party acts unreasonably, either when making such a request or when responding to it, in a way that forces the other party to incur any expense that could have been avoided, the party who acts unreasonably may be required to reimburse that expense.

3. **Prehearing Memorandum (Mandatory)** – At least 7 days before the hearing date listed above, you must provide the Court with a Prehearing Memorandum. You must also provide a copy to the opposing party unless that party has an attorney, and in that event, the copy must be provided to that attorney. The Memorandum should specify in detail what you want the Court to do and explain why that is reasonable. The Memorandum should also include a list of the witnesses and exhibits you intend to present at the hearing.

a. A **summary** of the issues for which you want rulings from the Court (such as custody, child support, parenting time or visitation, division of property, division of debts, spousal maintenance, and so forth).

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b. If there is a disagreement about **child support**, your Memorandum should state the amount that you think is reasonable and describe how you calculated that amount. For this requirement, the attachment of a completed Arizona Child Support Worksheet to the Memorandum will be sufficient. The Arizona Child Support Guidelines can be found on the Internet at the website for the Arizona Supreme Court.

In addition, if either party claims that previously ordered child support has not been paid in full, then your Memorandum should state the amount, if any, that you think is owed and show what has been paid and when. Simply stating that a certain amount is unpaid or that a certain amount has been paid will not be sufficient: dates that payments were due and amounts of payments that either were paid or should have been paid on those dates must be provided.

c. If there is a disagreement about **legal decision-making authority** (legal custody), your Memorandum should discuss each factor listed in A.R.S. § 25-403(A) that you think is relevant and why you think that factor supports your position. A.R.S. § 25-403(A) can be found on the Internet or in the reference section of local public libraries.

d. If there is a disagreement about **parenting time**, your Memorandum should include the specific, detailed parenting plan that you want the Court to adopt, including regular, holiday, and vacation parenting time. Forms for parenting time can be found on the Internet, and the completion and attachment of such a form to your Memorandum will be sufficient.

e. Your Memorandum should include your final list of witnesses.

f. Your Memorandum should include your final list of exhibits.

CRITICAL NOTE TO PARTIES: If there is any issue about which you want the Court to make a ruling, and you fail to identify it in your Prehearing Memorandum, or if you fail to submit a Prehearing Memorandum altogether, unless you have a very compelling excuse for that failure, you may be deemed to have waived that issue. Submitting a Prehearing Memorandum on the date of the hearing is the equivalent of not submitting one at all.

The parties are not required to file a Joint Prehearing Statement. Instead, each party is required to file the separate Prehearing Memorandum described above. If the parties believe that it would be beneficial to submit a Joint Prehearing Statement, that will be acceptable so long as that Joint Prehearing Statement is timely submitted and it complies substantively with the requirements listed above.

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4. **Attorney's Fees** – If a party requests an award of attorneys' fees and costs, the request should be noted in a single sentence in the Prehearing Memorandum along with citations to the legal authority on which the request is based.

5. **Parental Education Program** – If you and the other party have a natural or adopted minor child in common who is under the age of 18, then, if you have not done so already, at least 7 days before the hearing date listed above, you must file with the Court proof that you have complied with the Parental Education Program requirements of A.R.S. § 25-351 and following.

**What Happens When
A Party Does Not Comply with These Requirements**

If you do not appear for the hearing on the date and at the time stated above, or if you do not comply with one or more of the requirements listed above, and you cannot provide a reasonable excuse for doing so, the Court may penalize you in one or more ways. Penalties may include a refusal to allow you to present certain evidence, a financial penalty, or a hearing that proceeds as if you have consented to what the other party has requested (i.e., proceeding by default). See Ariz. Rs. Fam. L. P. 71(A); Maricopa Cty. Sup. Ct. R. 6.2(e).

**Finally,
A Few Suggestions**

In addition to complying with the requirements listed above, the presentation of your case probably will be much more effective if you do the following (but, these are only suggestions):

1. If any of your exhibits contain more than five pages, and those pages do not have page numbers on them, then without blocking out any relevant information, write in page numbers before you make the copies that you deliver to the Clerk and send to the other party. If possible, place those page numbers at or near the bottom right corner or the top right corner of each page. That way, during the hearing, it will become much easier for witnesses, and the other party to find a specific page within a multi-page exhibit.

Summary of Important Deadlines

Last day to identify **witnesses** – 30 days before the hearing date.

Last day to identify and provide copies of **exhibits** – 15 days before the hearing date.

Last day to deliver exhibits to the Court's Clerk – 7 days before the hearing date.

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Last day to file **Affidavit of Financial Information** (and provide copy to the other party) – 15 days before the hearing date.

Last day to provide copy of **expert witness** reports or declarations to the Court and the other party – 45 days before the hearing date.

Last day to **complete discovery** – 20 days before the hearing date.

Last day to file **Prehearing Memorandum** (and provide copy to the other party) – 7 days before the hearing date.

Last day to file proof of completion of **Parental Education Program** – 7 days before the hearing date.

11:51 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.